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## MASSACHUSETTS AS A PHILANTHROPIC ROBBER.

THE growth of government interference and the increasing tendency of its citizens to look to the State for aid rather than to their individual efforts are phases of modern social and economic life in the United States which for some years have occupied the thoughts of students of law and politics. Comment has often been made of late that the tariff laws, silver legislation, pension acts, and anti-trust laws are all signs of this one tendency. The increase of State legislation compelling individuals practising particular trades or professions — such as boiler engineers, doctors, barbers, plumbers, manufacturers of and workers on clothing or tobacco, horseshoers, and others — to be registered, licensed, or appointed by the State is but another sign of the same tendency; and so too are the laws passed ostensibly under what is called the “police power” by which the government has taken charge of private business, and which regulate minutely the manner in which an individual shall run his factory or his mine, pay his employees, build his buildings, manufacture his goods, etc.

One phase, however, of this increasing demand by the citizens that the State shall support them has not hitherto been noticed; and it is with the hope of calling attention to a new subject that this paper is written. While the facts here presented are taken from the statute books of Massachusetts alone, it is believed the new development of State aid described is not confined to any one State.

In the back portion of the volume issued annually by the Commonwealth of Massachusetts, and known, popularly as the “Blue Book,” technically as the “Acts and Resolves passed by the General Court of Massachusetts in the Year —,” will be found that form of legislation known as the “Resolves.”

Few of the citizens of the State are probably aware that through the medium of these “Resolves” the various Legislatures of Massachusetts since 1872, and especially since 1885, have appropriated as absolute gratuities, and awarded to private individuals as pure gifts, sums of money amounting to hundreds of thousands of

dollars.<sup>1</sup> Examination of the "Resolves" since the year 1872 shows that these appropriations of the public money for private benefit may be divided into three important classes.

The first great branch of State gratuities consists of gifts in the nature of pensions.

The State Legislature has not as yet established by statute any civil pension list; and yet it will probably surprise most citizens to know that there are four kinds of direct real civil pensions now given by the Commonwealth: —

*First.* In 1892 a man who was injured while defending property of the State at the Cooper Street riot, in 1863, succeeded in persuading the Legislature to grant him an annuity of \$100,<sup>2</sup> which was later increased to \$200,<sup>3</sup> and upon his decease became an annuity for life to his widow.<sup>4</sup>

*Second.* In 1887 an annuity of \$200 was granted to "the last of the Hassanamisco Indians";<sup>5</sup> but later apparently other Hassanamisco Indians turned up, for from 1895 to 1898 the State gives annuities of \$250 and \$300 to such Indians;<sup>6</sup> and since 1890 a regular sum of \$150 has been paid to A. B. "in consideration of his care of his late mother and aunt, who were members of the Ponkapog tribe of Indians, and were formerly beneficiaries of the Commonwealth."<sup>7</sup>

*Third.* For a long time annuities have been paid in a number of cases to injured employees of the State, or to the widow and children of certain employees killed while in the employ of the Commonwealth, notably to those killed or injured at the Hoosac Tunnel "from an explosion of glycerine which had been carelessly left by employees of the Commonwealth." These have been three, five, and ten year annuities, renewed as they expired in sums varying from one hundred to two hundred dollars per year.<sup>8</sup>

<sup>1</sup> See table at end.

<sup>2</sup> Resolves 1892, ch. 53. (During the remainder of this article where Resolves are cited, merely the year and the chapter will be given. It is to be understood that all such citations refer to Resolves.)

<sup>3</sup> 1894, ch. 24.

<sup>4</sup> 1895, ch. 8; 1896, ch. 10.

<sup>5</sup> 1887, ch. 32.

<sup>6</sup> 1895, ch. 44 (\$200); 1896, ch. 28 (\$300); 1897, ch. 96 (\$200 and \$250); 1898, ch. 11 (\$200 and \$250).

<sup>7</sup> 1890, ch. 13; 1891, ch. 89; 1893, ch. 17; 1895, ch. 7; 1897, ch. 5; 1898, ch. 10.

<sup>8</sup> 1882, ch. 39, 40; 1883, ch. 24, 25; 1885, ch. 22, 49; 1886, ch. 29; 1887, ch. 3, 11; 1888, ch. 10, 21, 53; 1889, ch. 39; 1895, ch. 5; 1891, ch. 145; 1892, ch. 11, 102; 1893, ch. 5, 13; 1894, ch. 11; 1896, ch. 8; 1898, ch. 42. And see instances cited later.

*Fourth.* Employees of the State who have become too old or incapacitated for work have been granted yearly pay.<sup>1</sup>

But in addition to these there has grown up within recent years a process of taking public money for private uses under the guise of charity, which has resulted in what is practically an indirect quasi-pension list. This form of gratuity takes the shape of gifts of salaries of deceased servants of the State or of a city to their relatives. As all these gifts are probably illegal and unconstitutional, the great increase of them becomes a question for serious consideration on the part of citizens and taxpayers.

In the year 1879, apparently for the first time, the Legislature began the practice of granting to a widow of a member of the Legislature who died while in office the balance of the salary to which he would have been entitled had he lived to the end of the term.<sup>2</sup> From this beginning, the Legislatures have now developed the practice to such extent that such balance of salary is granted, not only to the widow, but to almost any dependent relative, not only of Legislators, but of any servant of the State, from the Governor down to a page in the Legislature, or to the lowest clerk in one of the departments.

Thus, since 1879, the balance of the salary of a deceased member of the Legislature has been granted to his widow or executor or administrator twenty times.<sup>3</sup> The balance of salary has been granted to a daughter, to other children, to the mother, and even to an aunt of a Representative.<sup>4</sup>

To the widow of a member the Legislature has granted, not only the salary he would have earned, but also "certain expenses incident to his sudden death."<sup>5</sup>

It has presented to a member elect to the Legislature who did not qualify "the amount due him had he qualified and served as Representative,"<sup>6</sup> and to the child of a member-elect who had never taken his seat, his prospective salary.<sup>7</sup>

<sup>1</sup> 1886, ch. 4; 1895, ch. 115; 1896, ch. 105; 1897, ch. 38.

<sup>2</sup> 1879, ch. 2 (\$500).

<sup>3</sup> 1880, ch. 58 (\$500); 1881, ch. 14 (\$532.20); ch. 30 (\$515); ch. 31 (\$501.60); 1883, ch. 57; 1885, ch. 79 (\$661); 1884, ch. 73 (\$481); 1886, ch. 80 (\$756); 1887, ch. 107 (\$240); 1888, ch. 61 (\$757); 1890, ch. 7 (\$751); 1890, ch. 79 (\$252); 1892, ch. 106; 1893, ch. 28 (\$770); 1893, ch. 29 (\$759); 1894, ch. 55 (\$860); 1894, ch. 15 (\$880); 1895, ch. 120 (\$700); 1895, ch. 117 (\$790); 1897, ch. 14 (\$750).

<sup>4</sup> 1895, ch. 115 (\$820); 1897, ch. 4 (\$750); 1894, ch. 4 (\$760); 1898, ch. 41 (\$750); 1894, ch. 38 (\$750).

<sup>5</sup> 1894, ch. 82 (\$756 and \$16).

<sup>6</sup> 1889, ch. 107 (\$750).

<sup>7</sup> 1884, ch. 79 (\$650).

Then, broadening the practice, the Legislature has granted the balance of salary due, had the officer served, to the widow of a Governor, to the widow of a member of the Governor's Council, and even to the widow of a councillor-elect, who had not served at all, his full prospective salary; to the widow of a judge of the Supreme or Superior Court; to the widow or family of a judge of the Probate Court; to the widow of a judge of a Municipal Court in Boston;<sup>1</sup> of an assistant register of probate; of the controller of county accounts; of the superintendent of the Massachusetts Reformatory; and of bank, insurance, and railroad commissioners.<sup>2</sup>

From officials of the State, the Legislature has extended its gifts to relatives of clerks and minor officials: thus to the widows of clerks in offices of Commissioner of State Aid, State Board of Agriculture, and other departments at the State House;<sup>3</sup> to the widow of a clerk of the Senate;<sup>4</sup> to the mother of a register of labor in the Civil Service Commissioner's office,<sup>5</sup> and even to a brother of a page in the House of Representatives,<sup>6</sup> and to the brothers of an employee in the office of Sergeant-at-Arms,<sup>7</sup> and to the widows of messengers in the office of Secretary of State, and elsewhere,<sup>8</sup> and to the widow of a fireman at the State House.<sup>9</sup>

It has not only paid unearned salaries, but also "expenses incurred on account of the last sickness and burial of Z. Y., an employee of the Commonwealth, such sickness having been contracted while in the service of the Commonwealth."<sup>10</sup>

It has taken even further paternal care of its employees, by voting to pay six hundred dollars for the funeral expenses of a messenger at the State House, and "all expenses incurred in the search for his person since his disappearance and the reward for information concerning him";<sup>11</sup> and it has even voted to pay not only the balance of salary to which a man would have been entitled had he

<sup>1</sup> 1896, ch. 67 (\$6559.14); 1894, ch. 5 (\$187.10); 1897, ch. 68 (\$525); 1893, ch. 3 (\$800); 1888, ch. 56 (\$4384.32); 1891, ch. 113 (\$3433.33); 1891, ch. 47 (\$4099.47); 1891, ch. 22 (\$4323.66); 1892, ch. 25 (\$2056.45); 1894, ch. 30 (\$5193.55); 1895, ch. 75 (\$1376.25); 1889, ch. 37 (\$1646); 1894, ch. 16 (\$1225); 1896, ch. 7 (\$2883.38); 1893, ch. 110 (\$1636).

<sup>2</sup> 1893, ch. 85 (\$2076.67); 1895, ch. 76 (\$423.37); 1893, ch. 3 (\$397.72); 1887, ch. 80 (\$1750); 1891, ch. 57 (\$1173.39); 1896, ch. 4 (\$1627.69); 1897, ch. 62 (\$534.73).

<sup>3</sup> 1888, ch. 65 (\$697.22); 1883, ch. 3 (\$535.48); 1893, ch. 4 (\$1122.58); 1894, ch. 9 (\$408.06); 1894, ch. 23 (\$1466.67).

<sup>4</sup> 1886, ch. 47 (\$2100).

<sup>5</sup> 1884, ch. 80 (\$312).

<sup>6</sup> 1889, ch. 66 (\$657.50); 1895, ch. 78 (\$1761).

<sup>7</sup> 1893, ch. 10 (\$250).

<sup>8</sup> 1896, ch. 29 (\$1860.22).

<sup>9</sup> 1898, ch. 119 (\$240).

<sup>10</sup> 1897, ch. 3 (\$58.06).

<sup>11</sup> 1892, ch. 80 (\$600).

lived to the end of the year, but a further salary or grant to the administratrix of the estate of a certain official who died towards the end of 1893, of the sum of \$625, "being three months' salary from the date of his death."<sup>1</sup>

Nor has the Legislature confined its generosity to cases of death. It has made direct gifts of the money from the public treasury to living persons. It has given to a clerk in the office of Province Laws Commission her "loss of pay while disabled by sickness brought on by overwork."<sup>2</sup> A most flagrant case is one of a grant to a clerk in the office of the Tax Commissioner who resigned from ill health, "in recognition of his long and faithful service \$1000."<sup>3</sup> And it has several times made grants of permission to clerks in departments at the State House who resigned from illness or incapacity, to be kept upon the pay roll for successive years, or of their salary to the end of the year.<sup>4</sup>

These last cases of payments made to living persons are simply the indirect establishment by the Legislature of a civil pension list without the passage of any statute.

But the Legislature has not stopped at this point in making presents of the public moneys to individuals. In 1888, apparently relatives of city officials began to see how easily State employees were acquiring presents from the State, and to ask themselves why a State employee should be more entitled to unearned salaries than a city servant. From 1872 to 1888 there is no record of authority being granted by the Legislature to cities to pay to city officials the balance of salaries to which they would have been entitled if they had lived to the end of the year. In 1888 the Legislature began this practice through special statutes, at first giving cities authority to pay such balances of salary only to high officials, and gradually broadening out until, in 1897, relatives of employees in the Street Department, and of policemen, secured these gratuities from the city by kindness of the Legislature.

To show the increase of this quasi-pension legislation, in 1888 the Legislature granted the city of Boston right to pay the balance of his salary to the widow of the principal assessor. In 1889 there was one such grant; in 1890, none; in 1891, two; in 1892, one; in 1893, three, one of them being to the orphan sisters of a probation officer; in 1894, three; in 1895, two; in 1896, one; in 1897,

<sup>1</sup> 1894, ch. 25.

<sup>2</sup> 1889, ch. 98 (\$450).

<sup>3</sup> 1896, ch. 116.

<sup>4</sup> 1886, ch. 4 (\$1200); 1890, ch. 115 (\$1100); 1896, ch. 105 (\$600); 1897, ch. 38 (\$600); 1889, ch. 53 (\$1591 40); 1891, ch. 6 (\$456.99); 1894, ch. 93 (\$1000).

seven; in 1898, ten, including payments to children, father, sister, and widow of employees in various departments.<sup>1</sup>

As far as can be ascertained, the servants of no other city besides Boston have as yet taken advantage of the generosity of the Legislature; but if this practice of allowing cities to make presents of unearned salaries is to continue, undoubtedly officials of other cities will wake up to the chances thus offered.

The Legislature has not even stopped at city officials; it has begun to authorize counties to make these gifts. Thus, in 1891, the county of Plymouth was authorized to pay the balance of the salary of a deceased district court justice.<sup>2</sup>

The practice of paying these quasi-pensions has become so prevalent, and the pension idea has so infected the public mind, that it may seem a bold thing to attack the custom.

No amount of precedent, however, can excuse or legalize a wrong. And these payments are clearly a wrong and an injustice to the general taxpayer.

Upon first thought, the payment of the salary which an official or an employee would have earned may seem to be a kind, gracious, and benevolent act. But on the same line of reasoning any present of money to any deserving individual could be justified. If government is not to become tyranny, the cardinal principle of good government must be observed, — equal rights to all men; special privileges to none. And this maxim denies special privileges equally to the deserving and to the undeserving.

If the constitutionality of these resolves granting special payments of unearned salaries to living officials or to relations of deceased official servants should be tested in the courts, there seems to be little question but that the courts would immediately declare them illegal.

For instance, in 1891, the question arose whether the State could authorize the city of Brockton to build a city hall partly for the use of the city and partly for the use of the G. A. R., and it was held by the court in *Kingman v. Brockton*<sup>3</sup> that it could not.

“If a city or town may be authorized to give such assistance to a body of persons who have been soldiers or sailors in the war, the same principle

<sup>1</sup> Acts of 1888, ch. 78; Acts of 1889, ch. 329; Acts of 1891, ch. 50, 53; Acts of 1892, ch. 52; Acts of 1893, ch. 42, 44, 162; Acts of 1894, ch. 89, 90, 252; Acts of 1895, ch. 253, 254; Acts of 1896, ch. 256; Acts of 1897, ch. 157, 158, 203, 429, 455, 494, 514; Acts of 1898, ch. 87, 88, 99, 105, 111, 341, 347, 430, 446, 534.

<sup>2</sup> Resolve, 1891, ch. 44.

<sup>3</sup> 153 Mass. 258.

would seem to extend so far as to include those who have rendered other great and meritorious services, and thus are entitled to public gratitude, — such, for example, as societies of disabled or past firemen or policemen. *If once the principle is adopted that a city or town may be authorized to raise money by taxation for conferring benefits on individuals merely because in the past they have rendered important and valuable services for the benefit of the general public, occasions will not be wanting which will appeal strongly to the popular sense of gratitude, or to the popular emotion; and the interests and just rights of minorities will be in danger of being disregarded.* If the body of persons to be benefited is numerous, the greater is the influence that may probably be brought to bear to secure such an appropriation of the public money.”

So, too, in 1885, there was a question whether the State could authorize a town to pay a bounty to soldiers of the Civil War who had enlisted without any promise on the part of the town at the time of enlistment to pay them bounties, and when the town could not then legally pay bounties. The Court held that it could not, saying, in *Mead v. Acton*: —<sup>1</sup>

“The bounty to be paid cannot be regarded in the light of compensation for services rendered; for their services as soldiers were not rendered to the town, and the town had nothing to do with their compensation. The war has been over for many years, and the payment of these bounties cannot encourage enlistments, or in any way affect the public service or promote the public welfare. *The direct primary object is to benefit individuals, and not the public. In any view we can take of the statute, the payments it contemplates are mere gratuities or gifts to individuals. The principle would be the same if a town should vote a gratuity or a pension to one who had rendered services as an officer or was in any way entitled to its gratitude. This a town has not the power to do, even with the sanction of the Legislature.* A statute conferring such power is unconstitutional, because it authorizes raising money by taxation for the exclusive benefit of particular individuals, and appropriates money for a private purpose which can only be raised and used for public objects.”

So, in case of all the resolves above described, the payments “cannot be regarded in the light of compensation for services rendered.” Those services in the case of past officials had already been paid for. In case of newly-elected officials who did not serve there could be no possibility of “services rendered.” The same is true of payments of unearned salary for the time that officials were sick or incapacitated.

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<sup>1</sup> 139 Mass. 341.



The law seems to be clear therefore that all these resolves are an illegal usurpation of power by the Legislature, exercised under the cloak of an unwise sentiment of charity.

There has been still another form of pure gratuities given by the State in the shape of *quasi* pensions; namely, the voluntary payment of military or State aid given under special circumstances by special resolves to persons not entitled to such aid under any statute. These grants have been made either to the person himself, not legally entitled to aid, or to some relation who was not eligible to receive any aid under the existing statute, and for whose benefit this special grant by resolve had to be made; as, for instance, "A. B., widow of X. Y., who served during the War of the Rebellion as seaman on board United States coast survey steamers, shall be eligible to receive State or military aid in the same manner and to the same extent that she would have been entitled to receive the same had her late husband served as an enlisted seaman in the United States navy;"<sup>1</sup> or to "A. B. and C. D., father and mother of X. Y., who served during the War of the Rebellion in Company E 4th Massachusetts Cavalry, and who died in said service, shall be eligible to receive State aid in the same manner and to the same extent as if fathers and mothers of deceased soldiers were expressly included in the classes of persons authorized to receive aid by said act;"<sup>2</sup> "that A. B., widow of X. Y., *alias* M. N., who was a sergeant in Company G 1st Regiment Louisiana Volunteer Cavalry, shall be eligible to receive State aid . . . in the same manner and to the same extent that she would have been entitled had said X. Y. served to the credit of the Commonwealth;"<sup>3</sup> or to a mother "as if she had been dependent for support on her son at the time he was in the service."<sup>4</sup> A most remarkable case is a special grant of State aid of the sum of \$224 to A. B., "being amount of State aid he would have received had he been born while his father was serving in the Massachusetts Volunteers."<sup>5</sup> Twice have nurses in the Civil War been presented with sums of money.<sup>6</sup> Of these special exceptions to the statute made as a pure gift by the Legislature, there have been, roughly estimated — 2 in 1882; 2 in 1883; 12 in 1884; 6 in 1885; 6 in 1886; 13 in 1887; 10 in 1888; 25 in 1889; 13 in 1890; 24 in 1891; 23 in 1892; 6 in 1893; 1 in 1894; 2 in 1895; 2 in 1896; 3 in 1897.

<sup>1</sup> 1896, ch. 48.

<sup>2</sup> 1896, ch. 63.

<sup>3</sup> 1886, ch. 64.

<sup>4</sup> 1897, ch. 597; 1895, ch. 53.

<sup>5</sup> 1897, ch. 23.

<sup>6</sup> 1893, ch. 41; 1894, ch. 53.

The whole principle was radically wrong. Either the statutes were defective and should have been amended, or else the citizens of this State should have been forced to abide by the statutes. Special exceptions to the statutes should not be made in favor of individuals, no matter how hardly the statutes may press upon such individual or how much the peculiar circumstances of hardship may appeal to the Legislature. In fact, whether owing to the large increase in this class of gratuities or for other reasons, the Legislature has been forced several times to amend the statutes regarding this form of State assistance.

The second branch of gratuities consists of compensation for injuries received.

The largest class of these gifts is to persons injured while in the employ of the State. Compensation is apparently given on this basis alone, and regardless of the fact that in most of the cases the injuries were purely accidental or else not caused by any want of care on the part of the State or its employees. Thus, gifts have been made to employees of the State injured in the course of their employment at the Reformatory Prison for Women, the State Normal School, the Massachusetts Reformatory, the State Prison, the State Farm at Bridgewater, at State Primary School, State Reform School, at Revere Beach State Bath House or while working under the Metropolitan Sewerage and the Gypsy Moth Commission,<sup>1</sup> and the chief of the District Police has received such compensation for injuries.<sup>2</sup>

In 1893 a glaring case of pure gift occurred, when for injuries received at State Prison a watchman was awarded \$3,000 and "his salary during 1893 and for all the time that he has been or may be prevented by his injuries from discharging his duties."<sup>3</sup> And two amusing cases of the assumption by the Legislature of responsibility for the acts of God are found, in 1891 when a man was given \$300 (to use the exact language), "as a gratuity in consideration of injuries received by him . . . said A. B. being struck by lightning and seriously injured while employed mowing on the

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<sup>1</sup> 1897, ch. 9 (\$1800); 1895, ch. 66 (annuity of \$250); 1892, ch. 66 (five-year annuity of \$360); 1897, ch. 78 (\$2000); 1896, ch. 13 (annuity of \$360); 1895, ch. 40 (annuity of \$200); 1898, ch. 21 (annuity of \$600); 1894, ch. 65 (\$600); 1892, ch. 82 (\$500); 1886, ch. 54 (\$200); 1886, ch. 28 (\$200); 1880, ch. 26 (\$50); 1878, ch. 24 (\$226); 1895, ch. 105 (\$250); 1896, ch. 51 (\$250); 1897, ch. 76 (\$4000).

<sup>2</sup> 1884, ch. 5 (\$548).

<sup>3</sup> 1893, ch. 106.

camp ground of the Commonwealth at Framingham,"<sup>1</sup> and in 1888 when \$200 were given to a man for injuries received "in assisting to save from fire one of the State Normal School buildings at Framingham."<sup>2</sup> It is difficult to see why the State should have compensated these men; or on what principle "a naval cadet who was detached from the training ship 'Enterprise' on January 27 and placed on board steamer 'St. Louis' on January 29 and was disabled for life by an accident occurring to him on said steamer" received \$500 from the State.<sup>3</sup>

There is also a large class of gifts of the public money as compensation for injuries, loss of time, and expenses sustained by members of the militia while on duty at camp or on parade.<sup>4</sup> Wives of husbands and mothers of sons incapacitated from labor from injuries at camp and fathers of sons killed at the armory have been compensated.<sup>5</sup>

This has been carried to such an extent that in 1892 a five-year annuity of \$1000 was given to a man for loss of time and expenses at camp in 1888 and "for disabilities which are the result of a cold which settled in the eyes, making him blind and unable to earn a livelihood."<sup>6</sup> And in 1890 a corporal of the guard received \$350 compensation for "a bayonet wound received from one of the guard in his leg, purely accidental, inflicting a most painful and dangerous wound, incapacitating him from labor for eight weeks."<sup>7</sup> And a man in 1888 received \$218 for injuries while returning from camp.<sup>8</sup>

Then there is a class of cases of compensation by the State to private persons for loss or injury to their property (chiefly horses) in use by the militia, and to State servants and officers for loss of clothing and other property destroyed by fire in State buildings.<sup>9</sup>

The last class of cases under this branch of gratuities consists of compensations for injuries sustained by citizens of the State at the

<sup>1</sup> 1891, ch. 20.

<sup>2</sup> 1888, ch. 20.

<sup>3</sup> 1896, ch. 55.

<sup>4</sup> 1873, ch. 63 (\$300); 1876, ch. 37; ch. 38; ch. 39; ch. 40; ch. 41; ch. 44; 1882, ch. 23 (\$300); ch. 11 (\$300); 1886, ch. 62 (\$200); 1887, ch. 10 (\$92); 1890, ch. 32 (\$115); 1891, ch. 23 (\$150); 1894, ch. 26 (\$300); 1897, ch. 7 (\$175); 1898, ch. 67 (\$118); 1893, ch. 44 (\$75); 1892, ch. 24 (\$150); 1891, ch. 51 (\$200); 1894, ch. 28 (\$100); 1896, ch. 64 (\$300); 1895, ch. 9 (\$35); 1891, ch. 36 (\$297); 1898, ch. 17 (\$35.50).

<sup>5</sup> 1892, ch. 56 (annuity of \$200); 1896, ch. 9 (a five-year annuity of \$300); 1894, ch. 37 (\$150); 1895, ch. 78 (\$500); ch. 80 (\$500).

<sup>6</sup> 1892, ch. 81.

<sup>7</sup> 1890, ch. 49.

<sup>8</sup> 1888, ch. 51.

<sup>9</sup> 1887, ch. 9 (\$170); 1889, ch. 48 (\$300); 1888, ch. 31 (\$500); 1895, ch. 122 (\$2088.05); loss of horse, 1887, ch. 24 (\$300); 1891, ch. 13 (\$200); 1893, ch. 52 (\$150); ch. 73 (\$150); ch. 21 (\$75); injury to horse, 1893, ch. 20 (\$150); 1884, ch. 25 (\$200); 1885, ch. 54 (\$250); 1895, ch. 50 (\$75); 1898, ch. 38 (\$40); 1894, ch. 63 (\$60).

hands of employees of the State, no distinction apparently being made between injuries arising from accident and those caused by negligence.

One hundred and fifty dollars have been given to a man for injuries received in consequence of the firing a salute by the State militia at General Cogswell's funeral; and \$307 for injuries from a spent ball during rifle practice of the Cadets.<sup>1</sup> Three thousand five hundred and forty-three dollars were given to a man for damages caused by the placing of infected swine upon his premises by servants of the State in the employ of the manager of the Troy & Greenfield R. R.;<sup>2</sup> \$1200 for loss of house, barn, and contents, destroyed by fire caused by Gypsy Moth employees;<sup>3</sup> \$300 and an annuity of \$300 to the widow of a man killed by careless switching of cars on the Troy & Greenfield R. R.;<sup>4</sup> \$1000 to a woman for injuries "received as a result of a collision, occurring without her fault, between a carriage in which she was seated and a vehicle belonging to the Massachusetts Reformatory in charge of one of the convicts."<sup>5</sup>

Perhaps the most extraordinary as well as the most recent case is the gift of \$2000, in 1898, to a lodging-house keeper for injuries to her house on Mt. Vernon Street, resulting from the tearing down and rebuilding of the State House.<sup>6</sup> It was stated in the newspapers that these injuries largely consisted in loss of boarders, caused by the fact that the situation was rendered less desirable on account of the work being done on the State House.

The best illustration of this system of gifts is the case in 1891 where \$247.87 were paid to a company for injury to the premises occupied by it, caused by the settling of the floor of a room overhead, occupied by the State, through alleged negligent overloading. The Resolve itself states "the acts by which the floor of said room was caused to settle being of such a character that the *Commonwealth was not legally liable for any injury or damage done or caused thereby*."<sup>7</sup>

There are three great objections to this whole branch of State gratuities and to these payments for losses or injuries caused to, or by, employees of the State.

First, as before stated, such payments constitute robbery of the

<sup>1</sup> 1884, ch. 63; 1887, ch. 70.

<sup>3</sup> 1894, ch. 96.

<sup>5</sup> 1898, ch. 61.

<sup>7</sup> 1891, ch. 103.

<sup>2</sup> 1886, ch. 74.

<sup>4</sup> 1882, ch. 38.

<sup>6</sup> 1898, ch. 89.

taxpayers. The Constitution of Massachusetts says, Part II., chapter I, section I, article 4: —

“The General Court has power to impose and levy proportional and reasonable assessments, rates, and taxes . . . to be issued and disposed of by warrant . . . for the public service in the necessary defence and support of the government of the said Commonwealth and the protection and preservation of the subjects thereof according to such acts as are or shall be in force within the same.”

The courts of the Commonwealth have been assiduous in their care of the citizen against improper expenditure of public moneys. The courts have time and time again laid down the proposition that taxation must be for public purposes only; and that the public funds must not be expended for the benefit of private individuals, no matter how praiseworthy in motive or how advantageous to the State such an expenditure might be.

In *Lowell v. Boston*,<sup>1</sup> in 1872, the court was called upon to decide whether the Legislature could authorize the city of Boston to loan money to property owners burned out in the great Boston fire. It was decided that the Legislature had no power to allow such expenditure of moneys raised by taxation, and it was said: —

“The power to levy taxes is founded on the right, duty, and responsibility to maintain and administer all the governmental functions of the State, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public services, or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary.”

And in *Kingman v. Brockton*<sup>2</sup> the Court said that: —

“It is necessary to recur and to adhere firmly to fundamental principles. The right of taxation by a city or town extends only to raising money for public purposes and uses.”

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<sup>1</sup> 111 Mass. 460.

<sup>2</sup> 153 Mass. 258.

And in *Freeland v. Hastings*: —<sup>1</sup>

"A statute conferring such power would be obnoxious to the objection that it authorized the raising of money by taxation for the exclusive benefit of particular individuals; that it . . . appropriated money for a private purpose which could only be raised and used for public objects. It is hardly necessary to say that a statute designed to accomplish such purposes would be against common right, and would transcend the authority conferred on the Legislature by the Constitution."

It is interesting to test the above gratuitous grants by this standard. Hardly one can be said to be constitutional. There can be no doubt but that the State has relieved many cases of hardship and suffering; but hardship is no test of the propriety of a law or of taxation. It is just as great a hardship to the individual taxpayer to be obliged to contribute his money to be expended to relieve the suffering of some other individual.

It is not the duty of the State to play the part of philanthropist.

If a member of the militia or if any other servant of the State is injured in the course of duty, that is hard for him; but why should the State pay for it? It is no harder for him than for any private person who is injured in the course of his business. It is no more incumbent on the State to pay its employees for such injury than to pay any other individual.

There can certainly be no justice in allowing a man to recover damages from the State in cases where there would have been no legal liability had the injury been inflicted by the servants of a private person; that is, in cases where the injury was a mere accident, or one not caused by the negligence of any State employee. What reason, for instance, can be given for paying a man money simply because he happened to be struck by lightning while mowing the State camp ground?<sup>2</sup> Why should the State pay for mere accidents, unless it is going into the business of accident insurance? Such gratuitous payments may be kind and philanthropic to the individual suffering, but they are entirely unconstitutional, and unjust to the mass of taxpayers.

Nor are the payments which have been made for injuries sustained by others, and due to the negligence or fault of State employees, proper or legal as the law now stands. This leads to the second objection.

If the Legislature thinks that the State should be legally liable

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<sup>1</sup> 10 Allen, 589.

<sup>2</sup> 1891, ch. 20.

for its negligent acts, why should not the Legislature pass a general statute allowing the enforcement of such claims for injury by suit in the courts? Why should such liability be allowed or disallowed according to the whim of the particular Legislature?

But far from allowing such a right of suit to individuals, the Legislature and the courts have been very jealous in guarding the sanctity of the State against such suits in the courts. As Judge Gray said in *Troy & Greenfield R. R. v. The Commonwealth*: —<sup>1</sup>

“It is a fundamental principle of our jurisprudence that the Commonwealth cannot be impleaded in its own courts except by its own consent, clearly manifested by act of the Legislature ;”

and in *Briggs v. Light Boats*,<sup>2</sup> in 1860, Judge Gray had explained the reason for this doctrine (which had existed in this State as far back as 1812),<sup>3</sup> saying “that it would be inconsistent with the very idea of supreme executive power, and would endanger the performance of the public duties of the sovereign to subject him to repeated suits as a matter of right at the will of any citizen, and to submit to the judicial tribunals the control and disposition of his public property, his instruments and means of carrying on the government in war and peace, and the money in his treasury.”

In 1879, Governor Talbot, in his inaugural address, recommended, and the Legislature passed, an act allowing the bringing of suits or “claims founded on a contract for the payment of money” against the State.<sup>4</sup>

In 1887 another act was passed<sup>5</sup> allowing “all claims whether at law or in equity” to be enforced against the State. But in *Murdock Grate Co. v. Commonwealth*,<sup>6</sup> in 1890, the court held that the statute of 1887 could not be meant by the Legislature to create “an entirely new class of claims for which a sovereignty has never been held responsible and to impose a liability therefor,” and so it held that the State could not be sued for negligence in overloading the floor of a building and causing damage to the plaintiff.

“We do not find that demands founded on the neglect or torts of ministerial officers, engaged as servants in the performance of duties

<sup>1</sup> 127 Mass. 46 (1879).

<sup>2</sup> 11 Allen, 162.

<sup>3</sup> See *Sewall v. Lee*, 9 Mass. 370; *Commonwealth v. André's heirs*, 3 Pick. 225 (1825); *Pingree v. Coffin*, 12 Gray, 321 (1858); *Dewey v. Garvey*, 130 Mass. 86 (1881).

<sup>4</sup> See Acts of 1879, ch. 255, and *Milford v. Commonwealth*, 144 Mass. 64, and *Wesson v. Commonwealth*, 144 Mass. 60.

<sup>5</sup> Acts of 1887, ch. 246.

<sup>6</sup> 152 Mass. 28.

which the State as a sovereign has undertaken to perform, has ever been held to render it liable. Nor does this rest upon the narrow ground that there are no means by which such obligations can be enforced, but on the larger ground that no obligations arise therefrom. Municipalities, such as cities and towns, are created by the Commonwealth in order that it may exercise through them a part of its powers of sovereignty. Where they are engaged in the performance of public duties imposed upon them by statute, they are not liable to public actions of tort for the negligence of their agents employed for this purpose, unless such action is provided by statute. *Hill v. Boston*, 122 Mass. 344; *Curran v. Boston*, 151 Mass. 505.

"Where wrongs are done to individuals by those who are the servants of the government, those injured are not remediless, as such persons may be sued as may other citizens for the torts which they commit. There may be cases also where it would be entirely just that a remedy should be extended by the public to an individual for the injury he had sustained by the negligence of a public servant; but cases of this character the Legislature yet reserves for its own determination."

It is thus seen that the Legislature has expressly omitted to provide by statute for a liability on the part of the State, and there are good grounds for argument that the State should not be liable in cases of this kind, *i. e.*, "for neglect of a public duty imposed upon it by law for the benefit of the public, and for the performance of which it receives no profit or advantage."<sup>1</sup> It is therefore clearly unjust and unconstitutional for it to make, by resolve, special exceptions in behalf of certain individuals; and to pay them sums of money to which they are not legally, under the law, entitled.

The third objection is that the Legislature is an utterly unfit body to decide upon the justice of these claims.

Waiving the legality or illegality of the payments, the Legislature is not a tribunal competent or fitted to ascertain the real extent of the injuries claimed to be suffered, or to judge of the proper compensation for such injury. This will be readily seen when the method by which these sums of money are granted is clearly understood. It is as follows: Let us suppose that a man is injured while at camp, or that an employee of the Gypsy Moth Commission is hurt by falling out of a tree. He goes to his senator or representative to see if he cannot put his hand into the

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<sup>1</sup> See *Hill v. Boston*, 122 Mass. 344, where in 1887 the court held that the city could not be sued on account of injuries sustained from a defective staircase in a city school building.



public grab-bag and pull something out of the State. The legislator from sympathy, or from a desire to get votes, or from an inability to say "No," introduces a resolve calling for robbery of the public treasury in favor of his constituent. The resolve is referred to some appropriate committee, the committee on military affairs, or the committee on agriculture, or on public institutions, or on prisons, as the case may be. The petitioner for damages appears either personally or by counsel. A brief hearing is held. He is questioned by members of the committee; in rare cases one or two witnesses are heard. No counsel represents the State. There is no rigid cross-examination. The legislator who introduced the resolve makes an affecting appeal in behalf of the injured man. Some other friendly senator or representative, who knows little about the claim, is persuaded by the legislator to speak in favor of his pet resolve. The committee reports generally in favor of the robbery. It goes to the House, and, like all bills or resolves involving expenditure of money, is sent to the committee on ways and means. This committee, overwhelmed with work, gives a very casual consideration of the resolve, or in the case of those involving any large expenditures of moneys, listens to one or two witnesses, and reports it to the House. Meanwhile the legislator who introduced the resolve sees various members, logrolls, and impresses the House and Senate generally with the hardship of the case; and the House and the Senate pass it in a burst of sympathy and philanthropy, with little consideration of the legal standing of the claim, or of the rights of the taxpayers of the State to be protected against unconstitutional expenditure of the State's money. Such being the method of procedure, can any one believe that these resolves are a proper means of imposing a liability to pay money upon the State? None of the procedures of a court are used. The real responsibility for the injury, the real amount of damage caused, the real standard of compensation, cannot be ascertained by a committee. There is no provision for cross-examination, no representation of the State's side of the case, no certainty that all of the facts of the case are before the tribunal.

If the State should be liable for these injuries, that liability should be tested in court through the ordinary procedure of law like any other legal liability.

The illustration given above is the best proof of the injustice and illegality of those resolves. In the Murdock Grate Co. case the company had sued in court, and the Supreme Court had held,

not only that the State was not liable, but that the Legislature never had intended that it should be liable in such cases, and that it was contrary to public policy that the State should be required to pay damages of this kind. Having lost its suit in court, the plaintiff then went to the Legislature, and received from it a special compensation in the shape of a resolve granting the money which the court had said the State ought not to be required to pay.

The third branch of State gratuities consists of dispensations of charity, pure and simple, to individuals, from the money contributed in taxes by other individuals.

Thus in 1881, \$5000 was given to citizens and taxpayers of the town of Westfield for the purpose of rendering them some relief in view of the disastrous floods there.<sup>1</sup> And the bad precedent was followed in the presentation to citizens of the town of Lee of \$3000 in 1886 for the same reason.<sup>2</sup>

In 1886, \$2000 were given to the town of Monroe for the cost of a road ordered to be built by the county commissioners, which was claimed to be "of little benefit to the town but entirely to the benefit of the State by contributing to the business of the Troy and Greenfield R. R. and the Hoosac Tunnel;" and in 1888, \$2500 were given to the town of Florida for the same reason.<sup>3</sup> Two thousand four hundred dollars were presented in 1884 to twelve inhabitants of Gay Head "for their perilous, effective and meritorious service in the lifeboat, whereby lives of twenty persons were saved from the wreck of the steamer 'City of Columbus.'" <sup>4</sup> Three thousand dollars were in 1893 given to A. B. and "the family of five men who lost their lives in attempting to rescue the crew of brig 'Aquatic' wrecked on Cuttyhunk," <sup>5</sup> and \$47.20 to the town of Nantucket in 1898, "being the amount expended in caring for the crews" of certain wrecked vessels.<sup>6</sup>

In 1883, \$4836.51 were presented to a certain contractor for "loss sustained under a contract with the State for work done on the Hoosac Tunnel." So, too, a contractor was presented in 1898 with \$1374 for "loss sustained by reason of an error in a contract for building a public bath house for the State." And in 1887, \$2500 were given to the owner of a building for loss on account of

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<sup>1</sup> 1881, ch. 46.

<sup>2</sup> 1886, ch. 35; 1888, ch. 80.

<sup>3</sup> 1893, ch. 36.

<sup>4</sup> 1886, ch. 66.

<sup>5</sup> 1884, ch. 41.

<sup>6</sup> 1898, ch. 22.

the refusal of the State to take a lease.<sup>1</sup> Six hundred dollars were given in 1896 to an agricultural society for bounties for 1895, "being the amount which said society would have been entitled to receive had it been incorporated by an act of the Legislature."<sup>2</sup> In 1896 also a man was compensated for the value of a cow condemned and killed by the Board of Health; and the town also had its expenses for killing and burying said cow, \$45 in all.<sup>3</sup>

On principle, there can be no possible defence of the legality or constitutionality of these payments. Possibly they were meritorious; possibly the persons paid were worthy recipients of charity. But the fact still remains that it is not the duty or the right of the Legislature to dispense charity to favored individuals.

The whole matter may be summed up in one sentence. The Legislature has simply followed the motto of the New York politician: "What is the constitution among friends?"

The language of President Cleveland's veto of the Bill for the special distribution of seeds in the drought-stricken counties of Texas is particularly applicable: —

"I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering, which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that *though the people support the Government, the Government should not support the people*. Federal aid in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character."<sup>4</sup>

If any one believes that, after all, this whole question is a matter of slight importance, let him consider the following table and the notable increase in expenditures of this kind.

The following is a record made up as nearly accurately as possible from the Acts and Resolves of the various years from 1882 of the yearly sum of State gratuities to individuals, leaving out entirely payments made in the form of military or State aid as exceptions to the statutes, and also leaving out all payments of aid to private hospitals, etc.

<sup>1</sup> 1883, ch. 53; 1887, ch. 65; 1898, ch. 80.

<sup>3</sup> 1896, ch. 37.

<sup>2</sup> 1896, ch. 85.

<sup>4</sup> Veto Message, Feb. 16, 1887.

1882	\$2,625.00	1891	\$16,231.71
1883	\$6,836.51	1892	\$8,166.17
1884	\$5,391.00	1893	\$15,664.47
1885	\$1,761.00	1894	\$16,311.32
1886	\$14,653.00	1895	\$14,107.69
1887	\$7,157.00	1896	\$18,885.43
1888	\$10,342.12	1897	\$12,072.79
1889	\$7,491.80	1898	\$8,104.70
1890	\$3,673.00		

Previous to 1882 from 1872 to 1882, such payments averaged \$1000 a year.

But the evil and injustice arises not so much from the amount of money so expended, as from the violation of the fundamental principles of our government. "The right to tax is the right to raise money by assessing the citizens for the support of the Government and the use of the State. The term 'taxation' imports the raising of money for public use, and excludes the raising of it for private use."<sup>1</sup> "An appropriation of money raised by taxation, by way of gift to an individual for his own private uses exclusively, would clearly be an excess of legislative power . . . it is independent of all considerations of resulting advantage. . . . It needs no argument to show that such an arbitrary exercise of power would be a violation of the constitutional rights of those from whom the money or property was taken and an unjustifiable usurpation."<sup>2</sup>

That being the language of the Supreme Court of Massachusetts, in view of the instances given above of usurpation by the Legislature, the tax-paying citizen is certainly justified in calling the Commonwealth a philanthropic robber.

*Charles Warren.*

39 COURT STREET, BOSTON, MASS.

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<sup>1</sup> Mead v. Acton, 139 Mass. 341.

<sup>2</sup> Lowell v. Boston, 111 Mass. 462.